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26 **IN THE UNITED STATES DISTRICT COURT**

27 **FOR THE DISTRICT OF ALASKA**

JANE DOE I, JANE DOE II, JANE DOE  
III, JANE DOE IV, JANE DOE V, AND  
DOES 6-20

*Plaintiffs,*

v.

DAVID YESNER, UNIVERSITY OF  
ALASKA BOARD OF REGENTS AND  
UNIVERSITY OF ALASKA SYSTEM,

*Defendants.*

**CASE NO. 3:19-cv-00136-HRH**

1       **PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO**  
2       **FILE FIRST AMENDED COMPLAINT**

3  
4       Plaintiffs request leave of Court to file an amended pleading, First Amended  
5 Complaint.

6                   **A. INTRODUCTION**

7       1.       Plaintiffs are Jane Doe I, Jane Doe II, Jane Doe III, Jane Doe IV, Jane Doe V, Jane  
8 Doe VI and Jane Doe VII. Defendants are University of Alaska Board of Regents,  
9 University of Alaska System and David Yesner.

10       2.       Plaintiffs filed a complaint on May 15, 2019. Defendants University of Alaska  
11 Board of Regents and University of Alaska System served a partial motion to dismiss under  
12 Federal Rule of Civil Procedure 12(b)(6) on June 11, 2019. Defendant David Yesner served  
13 a motion to dismiss on June 25, 2019. Plaintiffs now seek leave to amend their complaint  
14 because more than 21 days have passed since Defendants served their Rule 12(b) motions.

15       3.       Plaintiffs seek to amend their complaint to include additional Plaintiffs, Plaintiffs  
16 Jane Doe VI and Jane Doe VII who also suffered sexual abuse and sexual harassment by  
17 Professor David Yesner while attending University of Alaska.

18                   **B. ARGUMENT**

19       4.       Unless the opposing party can show prejudice, bad faith, or undue delay, a court  
20 should grant leave to file an amended pleading. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

21               (a) Leave to amend should be freely given when justice so requires. Fed. R. Civ. P.  
22               15(a)(2); *Foman*, 371 U.S. at 182; *Bylin v. Billings*, 568 F.3d 1224, 1229 (10<sup>th</sup>  
23               Cir. 2009).

(b) Although the amendment is sought after 21 days of service of Defendants' motions, leave to amend should be freely given when there is good cause. *United States v. Dang*, 488 F.3d 1135, 1142-43 (9<sup>th</sup> Cir. 2007); *see* Fed. R. Civ. P. 16(b)(3)(A), (b)(4); *O'Connell v. Hyatt Hotels of P.R.*, 357 F.3d 152, 154-55 (1<sup>st</sup> Cir. 2004).

5. The Court should allow the filing of Plaintiffs' amended pleading because it is appropriate and necessary. *See Gamma-10 Plastics, Inc. v. Am. President Lines, Ltd.*, 32 F.3d 1244, 1255-56 (8<sup>th</sup> Cir. 1994).

6. Defendants will not be prejudiced by Plaintiffs' amended pleading. *Bylin v. Billings*, 568 F.3d 1224, 1229-30 (10<sup>th</sup> Cir. 2009); *Phelps v. McClellan*, 30 F.3d 658, 662-63 (6<sup>th</sup> Cir. 1994). Plaintiffs' amendment is not asserting a new cause of action.

7. Defendants will not be prejudiced by any delay that Plaintiffs' amended pleading may cause. This case is in the early stages. Discovery has not begun. *See Auster Oil & Gas, Inc. v. Stream*, 764 F.2d 381, 391 (5<sup>th</sup> Cir. 1985).

8. Plaintiffs diligently moved to amend as soon as it became apparent that the amendment was necessary. *See Arreola v. Godinez*, 546 F.3d 788, 795-96 (7<sup>th</sup> Cir. 2008); *Auster Oil & Gas, Inc. v. Stream*, 764 F.2d 381, 391 (5<sup>th</sup> Cir. 1985).

9. Plaintiffs are filing their amended pleading along with this motion.

### **C. CONCLUSION**

10. Defendants will not suffer prejudice or delay by this amended pleading. Plaintiffs

1 are filing this pleading so that justice may be done. For these reasons, Plaintiffs respectfully  
2 ask the Court to grant leave to file their First Amended Complaint.

3 DATED: July 22, 2019.

4 Respectfully submitted,

5  
6 By: /s/ Cornelia Brandfield-Harvey

7 Anthony G. Buzbee

8 *(Pro Hac Vice Admission Pending)*

9 *Attorney in Charge*

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## CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2019 I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Alaska by using the CM/ECF system. Participants in Case No. 3:19-cv-00136-HRH who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Cornelia Brandfield-Harvey  
Cornelia Brandfield-Harvey